

GUIDELINES FOR THE IMPLEMENTATION AND ENFORCEMENT OF LOUISVILLE METRO COUNCIL'S ORDINANCE PROHIBITING SMOKING IN BUILDINGS OPEN TO THE PUBLIC.

(EFFECTIVE NOVEMBER 15, 2005)

INTRODUCTION

Regulators and business owners will utilize the following guidance document in an effort to more clearly understand ordinance No. 123, Series 2005. The guidance document shall serve as the template for how the smoking ban ordinance will be enforced. The following guidelines are a collaborative effort between the Louisville Metro Health Department and the County Attorneys Office to interpret the intent of ordinance No. 123, Series 2005. The objective is to clarify regulatory uncertainties for regulators and the regulated business owners.

Section I. Purpose

The Louisville Metro Council believes, based on the studies examined and expert testimony, that smoking in enclosed spaces is a danger to those persons exposed to such smoke and may be a material annoyance, inconvenience, and discomfort to those who do not smoke.

Section II. Authority

These guidelines are promulgated by the Louisville Metro Health Department pursuant to Ordinance No. 123, series 2005, An Ordinance Prohibiting Smoking In Buildings Open To The Public.

Section III. Definitions

1. **Building:** Any structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has eighty percent (80%) or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary. If a person leases or possesses only a portion of a building, the term "building" applies to the leasehold or possessory interest as well.
2. **Conspicuous:** Obvious, prominent, capable of being seen.
3. **Common Area:** An area where individuals may congregate such as hallways, lobbies, restrooms, and elevators.

4. **Director:** Director of Health or his or her designee.
5. **Dwelling:** Any place used primarily for sleeping and conducting activities of daily living, including, without limitation, a hotel or motel room or suite or a hospital, hospice or nursing home room, but not a hotel, motel, hospital, hospice or nursing home lobby, common elevator, common hallway or other common area.
6. **Enclosed Smoking Area:** An area within a building where no more than fifty percent of the square footage of the floor space of the building is designated for smoking and such area that is designated for smoking is physically separated and independently ventilated from the remaining non-smoking areas of the building.
7. **Free Standing Bar:** An establishment within a building that is not a restaurant nor an attached bar, as those terms are defined herein, has a current distilled spirits and wine retail drink license, restaurant drink license, restaurant wine license or malt beverage license issued by the Commonwealth of Kentucky and Metro Government and serves alcoholic beverages for consumption by guests/patrons.
8. **Independently Ventilated:** The ventilation system of the enclosed smoking area in a building and the ventilation system of the non-smoking area in the remaining portions of the building do not have a connection which allows the mixing of air into the smoking and non-smoking areas of the building. A letter from a licensed, professional engineer shall certify that the ventilation systems do not, in fact, have a connection that allows the mixing of air from the enclosed smoking area and the non-smoking area of a building.
6. **Multi-use Building:** Structure that may contain different types of businesses. For the purpose of this ordinance, each business shall be considered a separate building (i.e. strip malls, high rise buildings, duplexes, etc...)
7. **Physically Separated:** Physical barriers encircling an enclosed smoking area of a building such as walls and doors extending from floor to ceiling that prohibit smoke from entering a non-smoking area within such building. There shall be no more than 64 square feet of normally open doorways per every 5,000 square feet of area designated for smoking within an enclosed smoking area. All common areas, such as lobbies, restrooms, hallways leading to common areas, and the like, shall be located in the non-smoking area of a building, which has an enclosed smoking area.
8. **Private Organization:** An establishment which maintains selective members, is operated by the membership, does not provide food, drink or lodging for pay to anyone who is not a member or a member's guest and is not profit oriented.
9. **Private Social Function:** An event in which a person or group rents a room for a

private event (i.e. wedding reception, retirement party, birthday party, business meeting, etc...).

Section IV. Application

1. The regulation applies to all buildings as defined in Ordinance No. 123, series 2005. This includes, but is not limited to, restaurants, offices, bowling alleys, bingo halls, hotels and motels, retail outlets, entertainment centers, salons, repair shops, service centers, educational sites, etc.
2. All businesses, except those that fall under the list of exceptions in Section C of ordinance No. 123, series 2005, are included under the provisions of the ordinance.
3. Outdoor spaces are exempt, unless covered overhead and having at least eighty percent (80%) or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary.
4. Smoking is prohibited within a reasonable distance from the outside entrance to any building so as to ensure that tobacco smoke does not enter the building through entrances, windows, ventilation systems, or other means.
5. All ashtrays shall be removed from any area where smoking is prohibited by sections B through I of ordinance No. 123, series 2005. Permanent structures that functioned as an ashtray shall be disabled or altered to prevent its use as an ashtray.

Section V. Posting of Signs

1. Signs must be posted in any building or establishment that subject to ordinance No. 123, series 2005, with letters of not less than one inch or symbols of no less than three inches high, using the words "No Smoking" or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette surrounded by a red circle with a red bar across it conspicuously posted on all public entrances so as to be clearly visible upon entry into the building or establishment.
2. Businesses may construct an enclosed smoking area, which is physically separate and independently ventilated to prevent smoke from entering other areas of the businesses. The enclosed smoking area may be no more than fifty percent (50%) of the square footage of the floor space of the building. If a building provides an enclosed smoking area, then such building or establishment shall have a sign that clearly and conspicuously recites "NO SMOKING SHALL BE PERMITTED INSIDE THIS FACILITY EXCEPT IN THE ENCLOSED SMOKING AREA." The enclosed smoking area of the building or establishment where smoking is permitted shall also have a sign on any door leading out of such

enclosed smoking area that clearly and conspicuously recites “NO SMOKING SHALL BE PERMITTED BEYOND THIS POINT IN THE REMAINING INTERIOR PORTIONS OF THIS FACILITY.”

3. It is strongly recommended for facilities exempt from ordinance No. 123, series 2005, to provide signage stating the facility allows smoking.

Section VI. Exempt Facilities

1. Permitting procedures for freestanding bars requires submittal of information to Inspections, Permits and Licenses (IPL) for annual ABC licenses. Information gathered through this process will determine if a facility is exempt from ordinance No. 123, series 2005, as a freestanding bar.
2. An initial assessment will be conducted by the Health Department to determine if a facility will be exempt from ordinance No. 123, series 2005. The following facilities are considered exceptions and shall not be subject to this regulation. This exception does not apply to common areas within the facilities.
 - Dwellings- to include residences, hotel and motel rooms, and dedicated smoking rooms in hospitals, hospices, and nursing homes.
 - Rooms being utilized by groups for private social functions, which are not open to the public, and reasonable steps are taken to ensure that smoke is not allowed to spread to common areas of the building.
 - Retail tobacco stores.
 - As part of a theatrical production, provided that patrons are forewarned and specific signage is posted at the theatre.
 - Indoor smoking areas provided in governmental office buildings or workplaces pursuant to KRS 61.165.
 - Facilities operated by private organizations (examples include but are not limited to: VFW Posts, Country Clubs, Churches).
 - Tobacco warehouses.
 - Facilities or property owned, leased or otherwise operated by a person or entity licensed and regulated by the Kentucky Horse Racing Authority under KRS Chapter 230 (examples include Sports Spectrum and Churchill Downs).
 - Freestanding bars as defined by the percentage of alcohol/food sales.
 - Enclosed smoking areas with separate ventilation systems as defined in Ordinance No. 123, Series 2005. A letter from a certified, professional engineer must be on file with the Division of Environmental Health and Protection.
 - Outdoor Facilities.
3. Private prohibitions in accordance with this ordinance may be enacted by an owner, lessee, principal manager, or person in control of any place, including without limitation, any motor vehicle, outdoor area, or dwelling and no person shall fail to abide by such private prohibition. The individual establishing the private prohibition shall administer the enforcement of such private prohibition.

4. A business that is unsure as to whether it falls within the exceptions listed in Section C of ordinance No. 123, series 2005, may request determination be made by the Director of the Division of Environmental Health and Protection. To do so, a business must make such request in writing, including the following:
 - Business Name
 - Business Address
 - Business Phone #
 - Intent of business
 - Financial statement of business proceeds if applicable
 - Statement advising why the facility should be exempt from the ordinance
 - Contact person and phone #
5. The Health Department will review the submitted information to determine if a facility is eligible for exemption. An exemption form will be provided by the Health Department's Division of Environmental Health and Protection to facilities who are eligible for exemption.

Section VII. Enforcement.

1. To report a violation of this ordinance, phone Metro Call at 311 or 574-5000.
2. The Louisville Metro Health Department shall enforce the provisions of ordinance No. 123, series 2005, through:
 - a. Investigation of complaints filed; and,
 - b. Reasonable inspections of premises and records regarding compliance with ordinance No. 123, series 2005 during normal hours of operation.
3. An owner, lessee, principal manager, or person in charge must ask smokers to refrain from smoking in any nonsmoking area and should take all reasonable steps to ensure that the violation is not repeated.

If persons refuse to extinguish their smoking material when asked, the following steps should be taken:

 - Ask the person to leave the premises
 - If they refuse to leave, call the Louisville Metro Police Department to report a criminal trespass complaint
4. One or more of the following shall be considered evidence of violation of this ordinance:
 - a. Substantiated complaint;
 - b. Observation of an individual smoking in a building or establishment where smoking is prohibited as provided by ordinance No. 123, series 2005;
 - c. Ashtrays or other cigarette/cigar receptacles in a building or establishment where smoking is prohibited as provided by ordinance No. 123, 2005;
 - d. Serving of individuals found to be in violation of ordinance No. 123, 2005;

- e. Observation of an owner, manager, employee, or person having control of the building or establishment, knowingly permitting smoking within the building or establishment where smoking is prohibited as provided by ordinance No. 123, series 2005.
- f. Failure to post applicable signage as required under ordinance No. 123, series 2005.

Section VIII. Citations

1. Citations may be issued to facility owners/operators and or building owners and/or individuals found in violation of this ordinance. The fines are defined in Section G of ordinance No.123, series 2005, and must be paid within seven (7) days from the date of issuance or a request for a hearing must be made to the Code Enforcement Board. Failure to appeal within seven (7) days will result in the person having waived the right to a hearing.
2. Notice of a citation may be provided in the following manner:
 - a. In hand service to the owner, lessee, manager, or person in control of the building;
 - b. First class mail to the owner, lessee, manager, or person in control of the building; or
 - c. In hand service or service by first class mail to any other person violating the provisions of this regulation.
3. Citations must be paid within seven (7) days to the Louisville Metro Health Department, 400 E. Gray St., Louisville, KY 40202.
4. Those desiring to appeal the citation must do so within seven (7) days of the citation. A letter requesting appeal must be sent to the Health Department, Division of Environmental Health and Protection, attention Smoking Ban Appeals Office. The letter is to contain the following information.
 - Name, address and daytime phone number of the person cited
 - Date of the citation
 - Citation officer
 - Written request to appeal the citation before the Code Enforcement Board
 - Reason for requesting the appeal
5. A hearing will be scheduled within 30 days from the date the request is received for the appeal, unless the requestor wants or agrees to a continuance not to exceed 14 days.
6. Violations will be tracked, with regard to determining penalty amounts, in yearly increments which start from the date of the first offense. Each calendar day during which a violation of Section B through I of ordinance No 123, series 2005 occurs shall constitute a separate and distinct offense.